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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

RAMONA M., Appellant, v. ARIZONA DEPARTMENT OF ECONOMIC SECURITY, JOB O., JASMINE O., ABIGAIL O., and JAZELLE O., Appellees.	2 CA-JV 2008-0021 DEPARTMENT B MEMORANDUM DECISION Not for Publication Rule 28, Rules of Civil Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. 15637800

Honorable Stephen M. Rubin, Judge Pro Tempore

AFFIRMED

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E C K E R S T R O M, Presiding Judge.

¶1 Appellant Ramona M. appeals from the juvenile court's order—entered on February 12, 2008, but not signed by the court until April 21, 2008—denying her motion to become the permanent custodian of her four legally dependent grandchildren. Because the record supports the court's finding "that it is not in the best interests of the children to be permanently placed with their grandparents at this time," we affirm its order denying Ramona's motion for placement.

¶2 Ramona is the maternal grandmother of Job O., Jasmine O., Abigail O., and Jazelle O., who were born between June 1993 and March 2000 to Ramona's daughter, Elva S. The children were first removed from Elva's custody and adjudicated dependent in 2001. The three older children were returned to Elva in 2003—two in March and the third on October 31—only to be removed again in January 2004 after Elva proved unable to maintain sobriety.

¶3 In April 2005, the juvenile court terminated both parents' rights to the children after the parents relinquished their parental rights and signed consents to the adoption of the children. Following a succession of different placements for each of the children between 2001 and 2006, the four siblings were finally placed together in June 2006 with their current foster family. In November 2006, the foster parents expressed a desire to adopt all four children and began the process of being approved to do so. In February 2007, Ramona filed a motion to intervene in the dependency action and a petition to adopt her grandchildren or, alternatively, for custody or visitation.

¶4 Over the objection of the Arizona Department of Economic Security (ADES), the juvenile court granted Ramona's motion to intervene in April 2007, dismissed her petition for adoption as improperly filed, and declined to stay the pending adoption proceeding filed on behalf of the children's foster parents.[1] The court ordered ADES to perform a new evaluation of Ramona and her husband Alonzo as a possible placement for the children.[2] It also ordered the couple to "comply with the requests of the Department including participation in a psychological and/or a psychosexual evaluation."

¶5 Dr. Carlos Vega, a clinical psychologist, evaluated both Ramona and Alonzo in June 2007. Vega had previously evaluated Alonzo in October 2004. Then, Vega had found Alonzo disingenuous, had advised against placing Abigail "under the same roof" with him, and had recommended referring him to a "psychotherapist with sex offender experience." In his 2007 evaluations of Ramona and Alonzo, Vega found "a lot of red flags" and thus once again recommended against placing the children with their grandparents. The supervisor of the ADES unit charged with conducting the new home study, Leisha Lee, essentially deferred to Vega's findings and recommendations, writing in an August 10, 2007, letter:

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[1]Ramona requested that this court stay the adoption and dependency proceedings pending the outcome of this appeal; we denied that request.

[2]Previous home studies of Ramona's and Alonzo's home had been conducted in 2001 and 2004. The first recommended against placing the children with Ramona. The 2004 study approved such a placement provided the results of a psychosexual evaluation of Alonzo determined that he was "not a threat" to the two younger children.

> I feel confident in stating, after reviewing two homestudies and three psychological evaluations which recommended ***against*** placement with the Mendozas, that the PALS Unit can offer no additional assistance in making a placement decision. No one in the PALS Unit has the qualifications or experience to contribute to or detract from what has been outlined by Dr. Carlos Vega.

As Lee further noted in her letter, Vega had "offer[ed] a litany of concerns" regarding both Ramona and Alonzo, and, of all the documentary material available to ADES, "only the psychological evaluation completed by Dr. Philip Balch presented Mr. Mendoza in any type of favorable light."

¶6 Ramona and Alonzo had independently sought their own evaluations from Dr. Balch, who evaluated Alonzo in April 2006 and Ramona in July and August 2007, using a Spanish interpreter in each case. In his written reports of those evaluations, Balch stated that he found no "psychological disqualifying factors" that would make placing the children with Ramona "problematic" and found "little reason to suspect that [Alonzo] presents any level of sexual risk to his step-grandchildren, or to minors in general . . . [provided] he remains abstinent from the use of alcohol or other drugs."

¶7 At the evidentiary hearing on Ramona's motion for placement held on December 12, 2007, the parties first stipulated to the admission of exhibits. Then, after Dr. Balch had been called to the witness stand and sworn, but before he began testifying, the parties agreed to simply submit the placement issue for decision by the court based on the available record. The court excused Dr. Balch, heard closing arguments from counsel, took

the matter under advisement, and subsequently issued the minute entry ruling from which Ramona appeals.

¶8 In the first of the six issues she has raised, Ramona complains that, in response to her efforts to adopt her grandchildren, ADES subjected her to an unnecessarily rigorous, unreasonably harsh, and objectionable preadoption investigation, contrary to the directive of A.R.S. § 8-105(N). In general, § 8-105 requires prospective adoptive parents to be investigated and certified as suitable before they will be permitted to adopt. Subsection (N) provides that § 8-105 does not apply if the applicant is a grandparent or other enumerated relative of the child to be adopted.

¶9 The state counters that Ramona placed this issue squarely before the juvenile court by filing her "notice to court to consider A.R.S. § 8-105" in September 2007; that the court denied her "motion" after hearing oral argument on October 1, 2007; and that Ramona did not appeal that ruling. The transcript of the October 1 hearing is not before us, and the court did not explain in the minute entry the basis for its ruling. In her "notice," however, Ramona acknowledged that the court has the inherent "discretion to investigate prospective adoptive parents in whatever manner it feels is appropriate." Not only do we agree with that premise, but we note Ramona has asked for no specific relief or recourse in connection with this issue. Even if her assertion is true and she was investigated in greater depth than necessary, we fail to see how that could constitute reversible error in this appeal.

¶10 Ramona's second and third issues are the heart of her appeal—her contention that she and her husband were qualified and suitable to adopt the children and that, as their

grandmother, she had priority for placement over the nonrelative foster parents with whom the children have lived since 2006. Ramona reasserts on appeal various facts she believes demonstrate her fitness to adopt, argues that her relationship to the children favors placing them with her as a matter of public policy, and contends the court should have given greater weight to the opinions of Dr. Balch and rejected those of Dr. Vega.

¶11 Pursuant to A.R.S. § 8-845(A)(2), a juvenile court may award a dependent child to the custody of a grandparent or other relative, "unless the court has determined that such placement is not in the child's best interests." The court has broad discretion in determining the proper placement of a dependent child, *Antonio P. v. Ariz. Dep't of Econ. Sec.*, 218 Ariz. 402, ¶ 8, 187 P.3d 1115, 1117 (App. 2008), and its primary consideration must always be the child's best interests. *See* § 8-845(C) (in determining permanent placement, "court shall order a plan of adoption or another permanent plan that is in the child's best interest"); § 8-845(B) (child's health and safety of paramount concern); *Antonio P.*, 218 Ariz. 402, ¶ 8, 187 P.3d at 1117. We review a court's placement decision only for an abuse of discretion. *Antonio P.*, 218 Ariz. 402, ¶ 8, 187 P.3d at 1117; *In re Maricopa County Juv. Action No. JD-6236*, 178 Ariz. 449, 451, 874 P.2d 1006, 1008 (App. 1994).

¶12 Clearly, the juvenile court has broad discretion to order the permanent placement of these children with the foster family that has been competently meeting their many needs since June 2006. The children had been wards of the state since 2001, and each had a succession of failed placements. Twice, in 2001 and in 2004, Ramona had been considered but not found suitable to be a placement for them. In August 2005, she had come

forward and again expressed interest in having at least two of the children placed in her custody. Inexplicably, she then waited until February 2007—nearly two years after the children had become legally free for adoption and eight months after all four siblings had finally been placed together in a potential adoptive home—before moving to intervene in the dependency action and formally seeking placement. It was also plainly within the court's discretion to consider the timing and circumstances of Ramona's request, as well as the present circumstances of the children, in assessing the children's best interests and reaching its decision.

¶13 By reasserting the facts she believes establish her fitness to adopt her grandchildren and by arguing that the court assigned either too much or too little weight to the competing opinions of Dr. Vega and Dr. Balch, Ramona is asking us to invade the province of the juvenile court by finding facts and reweighing evidence. This we will not do. "[Resolving] conflicts in the evidence is uniquely the province of the juvenile court as the trier of fact; we do not re-weigh the evidence on review." *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, ¶ 12, 53 P.3d 203, 207 (App. 2002); *see also Lashonda M. v. Ariz. Dep't of Econ. Sec.*, 210 Ariz. 77, ¶ 16, 107 P.3d 923, 928 (App. 2005) (reweighing evidence is not function of appellate court, which determines only whether substantial evidence supports ruling). Because this record contains substantial evidence to support the juvenile court's best-interests determination, we are unable to say it abused its discretion in denying Ramona's motion. *Lashonda M.*, 210 Ariz. 77, ¶ 16, 107 P.3d at 928.

¶14 In her fourth issue, Ramona contends the juvenile court erred both in admitting Dr. Vega's reports in evidence and in giving his opinions "improper weight." However, because Ramona both stipulated to the state's admission of those reports and also offered them in evidence herself, she cannot now object that they were admitted and considered by the court. *See City of Tucson v. Apache Motors*, 74 Ariz. 98, 107, 245 P.2d 255, 261 (1952) (admitting appellate decision in evidence "would have been erroneous except for the stipulation of counsel that it might be so received"); *Nash v. Kamrath*, 21 Ariz. App. 530, 532, 521 P.2d 161, 163 (1974) (appellants who had stipulated to certain excisions from documentary evidence at trial could not assert error on appeal); *Gustafson v. Riggs*, 10 Ariz. App. 74, 76, 456 P.2d 92, 94 (1969) ("The stipulation of evidence into the record . . . waives any error arising from the introduction of the evidence itself."). Vega's reports and opinions were, therefore, properly admitted in evidence pursuant to stipulation, and their weight was for the court alone to determine. *See Jesus M.*, 203 Ariz. 278, ¶ 12, 53 P.3d at 207.

¶15 Next, Ramona asserts that the juvenile court did not need the consent of ADES to "order the adoption" of these children and "failed to perform its job by merely 'rubber stamps' [sic] whatever C[hild] P[rotective] S[ervices] desires." As the state notes, the court did comment at the December placement hearing that it viewed the issue of whether children in the custody of ADES could be adopted without the agency's consent as "potentially a controlling legal question" in the case. But the court further observed that it had authority to rule on Ramona's motion for placement without resolving what it described as "the ultimate bottom line in the case in terms of the[children's] adoption." The court declined

Ramona's counsel's offer to brief the issue, and it is clear from the record that the court only mentioned but did not rule on what was still a prospective issue only. There is, in short, no ruling by the court for us to review.

¶16 Finally, Ramona contends her right to procedural due process was violated because the court "allow[ed] the foster parent placement proceedings to go forward without [her] being given an opportunity to be heard regarding her own interest in adopting her grandchildren." She asserts—without benefit of any supporting citation to the record—that "the decision to deny [her] the opportunity to adopt her grandchildren was made long before she intervened in these proceedings." Our review of constitutional issues, like our review of mixed questions of fact and law, is de novo. *In re Andrew C.*, 215 Ariz. 366, ¶ 6, 160 P.3d 687, 688 (App. 2007) (constitutional and statutory-construction issues); *Willie G. v. Ariz. Dep't of Econ. Sec.*, 211 Ariz. 231, ¶ 8, 119 P.3d 1034, 1036 (App. 2005) (mixed factual and legal questions).

¶17 The essence of procedural due process is "'notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and to afford them an opportunity to present their objections.'" *Monica C. v. Ariz. Dep't of Econ. Sec.*, 211 Ariz. 89, ¶ 16, 118 P.3d 37, 40 (App. 2005), *quoting In re Maricopa County Juv. Action No. JS-501904*, 180 Ariz. 348, 355, 884 P.2d 234, 241 (App. 1994). Here, the record conclusively refutes Ramona's claim that she did not receive procedural due process. She had knowledge of the dependency proceeding virtually, if not actually, from its inception in May 2001. Exhibit seven at the placement hearing is the report of a "kinship foster care

assessment study" of Ramona and Alonzo performed in July 2001, the first time Ramona sought custody of her grandchildren. Exhibit eight is the report of the comparable study performed in 2004. And the record reflects Ramona contacted Child Protective Services again in August 2005 to request that two of the children be placed with her.

¶18 In April 2007, the juvenile court granted Ramona's motion to intervene in the dependency proceeding. As a party, and represented by counsel, Ramona not only received notice of all further proceedings but participated fully in those proceedings. Her unsupported assertion that "the decision to deny [her] the opportunity to adopt her grandchildren was made long before she intervened in these proceedings" is not borne out by the record, and we reject her contention that she was denied due process of law. The test for whether Ramona was afforded procedural due process is not whether she ultimately achieved the outcome she desired.

¶19 For the reasons stated, we find neither error nor abuse of the juvenile court's discretion. We therefore affirm its order denying Ramona's motion to transfer the children from their current adoptive placement to Ramona's custody.

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PETER J. ECKERSTROM, Presiding Judge

CONCURRING:

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PHILIP G. ESPINOSA, Judge

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GARYE L. VÁSQUEZ, Judge